

6399



STATE OF CONNECTICUT  
OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

PAUL J. KNIERIM, JUDGE  
Probate Court Administrator

THOMAS E. GAFFEY  
Chief Counsel

HELEN B. BENNET  
Attorney

DEBRA COHEN  
Attorney

186 NEWINGTON ROAD  
WEST HARTFORD, CT 06110

TEL (860) 231-2442  
FAX (860) 231-1055

To: Senate Co-Chair Paul Doyle  
House Co-Chair Toni Walker  
Senate Ranking Member Rob Kane  
House Ranking Member Lile Gibbons  
Honorable Members of the Human Services Committee

From: Paul J. Knierim, Judge  
Probate Court Administrator

Re: HB 6399 An Act Concerning Child Protection

Date: February 24, 2009

---

Thank you for the opportunity to testify about HB 6399, An Act Concerning Child Protection. I am here to comment on sections 4 and 7 of the bill, which deal with the transfer of child custody matters from the Probate Court to the Superior Court and jurisdictional changes for adoption matters.

**Section 4 Transfer of Matters from Probate Court to Superior Court**

Section 4 would amend §45a-623, which provides for the transfer of matters concerning the removal of a parent as guardian from the Probate Court to the Superior Court. The Probate Courts and the Superior Court for Juvenile Matters have concurrent jurisdiction for matters involving removal of parent as guardian and termination of parental rights. Such matters are typically brought to the Probate Court by family members, whereas the Department of Children and Families is generally the moving party in the Superior Court.

The statute currently provides for transfers to be made in accordance with rules adopted by the judges of the Supreme Court. Rules 7 and 8 of the Connecticut Probate Practice Book were adopted to implement the statute and provide that a contested removal or termination matter may be transferred as of right at the

request of any party other than the petitioner. The court may, in its discretion, transfer a matter on the request of the petitioner. The rules establish time and other limitations upon requests for transfer. Copies of Rules 7 and 8 are attached.

To address difficulties that can arise when matters concerning the same child are pending in both courts at the same time, the Chief Administrative Judge for Juvenile Matters, the Commissioner of Children and Families, and my office entered into an Inter-Agency Agreement. The agreement provides a mechanism for determining the more appropriate forum. As part of that mechanism, it calls for communications between the courts, and for paramount consideration to be given to the child's need for safety and permanency. A copy of the Agreement is attached.

The bill would mandate transfer from Probate Court to Superior Court in two additional circumstances. First, it would require transfer in the event that the Superior Court has entered an order granting custody of the child to DCF. Second, it would require transfer whenever a petition concerning the child is also pending in the Superior Court.

We believe that the bill is unnecessary because the existing rules and the Inter-Agency Agreement have functioned well. Neither the Chief Administrative Judge nor the Commissioner of DCF has advised us of any difficulties with this framework. As a practical matter, the determination of which court should hear a case that has been initiated in both courts is addressed promptly at the outset of the case in consultation with the DCF worker. Motions to transfer cases pursuant to §45a-623 are rare.

The proposed amendment would allow DCF to obtain a transfer as a matter of right without regard to existing rules governing transfer. It would eliminate any discretion on the part of the judges involved. We do not believe that an appropriate basis exists for this significant change in procedure.

## **Section 7 Jurisdiction for Adoptions**

Section 7 of the bill would authorize the Superior Court to conduct adoptions when that court has previously terminated the rights of a parent of the child. Under current law, Probate Courts have exclusive jurisdiction for adoptions. Because adoptions are heard at the Probate Court where the adoptive family resides, maintaining jurisdiction in the Probate Court is clearly more convenient for the adoptive parents, particularly when the termination may have taken place at a distant Superior Court location. Probate Courts provide a less intimidating atmosphere where families can enjoy the special ceremonies that probate judges have developed to memorialize this significant event.

## RULE 7

### Transfers of Contested Petitions For Termination of Parental Rights From Courts of Probate to the Juvenile Court

#### 7.1. Motion to Transfer by any Legal Party Except Petitioner

Contested petitions for termination of parental rights shall be transferred from the court of probate where they have in the first instance been filed to the juvenile court of appropriate venue upon motion of any legal party except the petitioner.

*Commentary* — In a contested termination of parental rights proceeding, the court of probate is required to transfer the case to the juvenile court upon the motion of any party to the action, except the petitioner, under the provisions of Gen. Stat. § 45a-715(g). In such case the appropriate juvenile court would be the one having jurisdiction over the town or towns in the district of the transferring court of probate. Gen. Stat. § 45a-717 empowers the juvenile court to decree a termination of parental rights in any such case transferred to it by a court of probate.

#### 7.2. Motion to Transfer by Petitioner or Court of Probate

Contested petitions for termination of parental rights may, in the discretion of the judge of probate, be transferred from the court of probate to the juvenile court upon either the motion of the petitioner or that of the court itself.

*Commentary* — In a contested termination of parental rights proceeding, the court of probate may transfer the case to the juvenile court upon a motion by the petitioner or on its own motion under the provisions of Gen. Stat. § 45a-715(g). In such case the transfer is discretionary with the court of probate and not mandatory.

#### 7.3 Where and When to File Motion to Transfer — Copies

Any motion for such transfer shall be filed with the court of probate no later than the date fixed for the first hearing on the merits which has been set by the court of probate under the provisions of Gen. Stat. § 45a-716. The moving party shall, not later than three days before the filing of the motion, serve copies of such motion upon all parties of record in the manner prescribed by Sec. 120 of the *Practice Book*. Failure to file and serve the motion seasonably shall constitute a waiver of the right of any party to move for such transfer, provided, however, that the court of probate may for good cause shown extend the time for serving and filing the motion.

*Commentary* — Service of the copies of the motion upon the parties of record will constitute notice that the hearing will not be held as scheduled.

#### 7.4. Contents of Motion to Transfer — Who May File

Any motion for such transfer shall contain a statement that the petition for termination of parental rights will be contested. A motion filed by a petitioner shall also set forth reasons why the petition should be transferred to the juvenile court for determination. Such motion may be filed by the moving party or his or her attorney and, in the case of a minor or incompetent, shall also be approved by such minor's or incompetent's guardian ad litem.

*Commentary* — Since the court of probate has discretion to grant or deny the motion of the petitioner to transfer the case to the juvenile court under Rule 7.2, such motion must set forth the reasons why it should be transferred. Without such reason, the court of probate would lack a basis for reasonable exercise of that discretion.

#### 7.5. Notice of Transfer on Motion by Court of Probate Under Rule 7.2

When any court of probate determines that a case shall be transferred on its own motion, notice of the granting of such motion and of the transfer shall be given to all parties of record no later than the date fixed for the first hearing on the merits set by the court of probate in accordance with Gen. Stat. § 45a-716. Failure to so notify the parties in interest shall constitute a waiver on the part of the court of probate to move for such transfer, provided, however, that the court of probate may for good cause transfer such case on its own motion after the date fixed for the first hearing on the merits.

#### 7.6. Schedule of Hearing and Notice of Hearing on Motion by Petitioner to Transfer Under Rule 7.2

Upon receipt of a motion by the petitioner to transfer, the court of probate may set the time and place for a hearing on such motion to show cause why the matter should be transferred to the juvenile court for determination. Notice of such hearing shall be given to all parties in interest by certified mail or otherwise no later than three days prior to the date set by the court of probate for such hearing, and the hearing on the termination of parental rights is continued until the motion to transfer is decided. If the court denies the motion to transfer, it shall establish a new date for the hearing on the petition for termination of parental rights.

*Commentary* — Where the motion to transfer to juvenile court is made by the petitioner under Rule 7.2, the court of probate shall schedule a hearing thereon giving notice of such hearing by certified mail to all parties in interest no less than three days before such hearing. The first hearing on the petition for termination of parental rights shall be postponed and later rescheduled if the motion to transfer is denied.

#### 7.7. Decree on Motion to Transfer Under Rule 7.1

When a motion to transfer is made by a legal party other than the petitioner, the court shall automatically grant such motion within five days after its receipt by the court.

*Commentary* — The motion to transfer to the juvenile court the termination of parental rights proceeding by any party other than the petitioner or by the court of probate shall be automatically granted by the court of probate within five days of the receipt of such motion. The granting of such motion under Rule 7.1 is mandatory and not discretionary with the court of probate.

#### 7.8. Administrative Actions Upon Granting of Motion to Transfer

In any case where a court of probate grants a motion to transfer a contested petition to the juvenile court, the order shall become part of the original file of said case. The clerk of the court of probate shall make copies of the file and papers of the case and retain them as the records of the case in the court of probate. Within three days following the date the motion to transfer is granted, the clerk of the court of probate shall transmit by certified mail the original file and papers to the juvenile court having jurisdiction over matters arising in the probate district where the petition is filed. All parties to the proceeding shall be notified of the date on which the file and papers were transferred.

#### 7.9. Copies of Juvenile Court Decrees and Appeals

Upon final determination of the matter by the juvenile court, a copy of that court's decree shall be sent to the court of probate from which the transfer was made, and if the juvenile court decision is appealed, a copy of the appeal shall be sent to the court of probate from which the transfer was made.



## RULE 8

### Transfers of Contested Petitions For Removal of Parent as Guardian From Courts of Probate to the Superior Court for Juvenile Matters

#### 8.1 Motion to Transfer by any Legal Party Except Petitioner

Contested petitions for removal of parent as guardian shall be transferred from the court of probate where they have in the first instance been filed to the Superior Court for juvenile matters of appropriate venue upon motion of a party other than the petitioner.

*Commentary* — In a contested proceeding regarding removal of a parent as guardian, the court of probate is required to transfer the case to the Superior Court for juvenile matters upon the motion of a party other than the petitioner, under the provisions of Public Act 93-344. In such case, the appropriate Superior Court for juvenile matters would be the one having jurisdiction over the town or towns in the district of the transferring court of probate.

#### 8.2 Where and When to File Motion to Transfer — Copies

Any motion for such transfer shall be filed with the court of probate no later than the date fixed for the first hearing on the merits which has been set by the court of probate under the provisions of Gen. Stat. § 45a-609. The moving party shall, not later than three days before the filing of the motion, serve copies of such motion upon all parties of record in the manner prescribed by Sec. 120 of the *Practice Book*. Failure to file and serve the motion seasonably shall constitute a waiver of the right of any party to move for such transfer, provided, however, that the court of probate may for good cause shown extend the time for serving and filing the motion.

*Commentary* — Service of the copies of the motion upon the parties of record will constitute notice that the hearing will not be held as scheduled.

#### 8.3. Contents of Motion to Transfer — Who May File

Any motion for such transfer shall contain a statement that the petition for removal of parent as guardian will be contested. Such motion may be filed by the moving party or his or her attorney and, in the case of a moving party who is a minor or is incompetent, shall also be approved by such minor's or incompetent's guardian ad item.

#### 8.4. Decree on Motion to Transfer

When a motion to transfer is made by an appropriate party, the court shall automatically grant such motion within five days after its receipt by the court.

*Commentary* — The motion to transfer shall be automatically granted by the court of probate within five days of the receipt of such motion. The granting of such motion under Rule 8.1 is mandatory and not discretionary with the court of probate.

#### 8.5. Administrative Actions Upon Granting of Motion to Transfer

In any case where a court of probate grants a motion to transfer a contested petition to the Superior Court for juvenile matters, the order shall become part of the original file of said case. The clerk of the court of probate shall make copies of the file and papers of the case and retain them as the records of the case in the court of probate. Within three days following the date the motion to transfer is granted, the clerk of the court of probate shall transmit by certified mail the original file and papers to the Superior Court for juvenile matters having jurisdiction over matters arising in the probate district where the petition is filed. The clerk of the court of probate shall notify all parties to the proceeding of the date on which the file and papers were transferred.



INTERAGENCY AGREEMENT BETWEEN  
THE OFFICE OF THE PROBATE COURT ADMINISTRATOR,  
THE JUDICIAL BRANCH AND  
THE DEPARTMENT OF CHILDREN AND FAMILIES

In the interest of expediting judicial hearings for abused and neglected children, parties hereto agree:

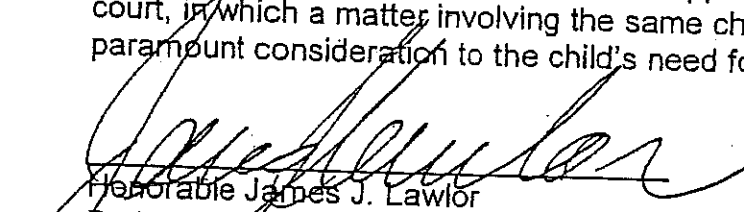
1. The Department of Children and Families (hereinafter "DCF") shall notify the probate or superior court of the pendency of a matter involving the same child in the other court. DCF shall submit an affidavit indicating the worker has made diligent and current efforts to determine if other proceedings are pending.

2. When a prior superior court case is pending, the probate court should dismiss its action.

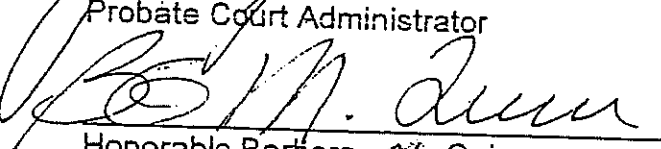
3. If a prior probate court case is pending, DCF should determine whether the child's needs may be met through that court proceeding, considering: whether the child is already living with a suitable relative, whether that relative requires services from DCF, and any other factors that may affect the child's safety and permanency. If DCF determines that the child's needs may be met through the pending probate court proceeding, it will seek a withdrawal of the superior court action.

4. If DCF determines that the child's needs may not be met through the prior pending probate court action, the agency will ask that the probate court either defer any action while the superior court matter is pending or dismiss the action.


5. In determining which forum is appropriate, the superior court and the probate court, in which a matter involving the same child is pending, shall confer, giving paramount consideration to the child's need for safety and permanency.

  
Honorable James J. Lawlor  
Probate Court Administrator

Date: 1-5-06

  
Honorable Barbara Quinn  
Chief Administrative Judge  
Superior Court for Juvenile Matters

Date: 5/15/06

  
Darlene Dunbar  
Commissioner  
Department of Children and Families

Date: 7/10/06

